

Iowa Code Annotated

Title XV. Judicial Branch and Judicial Procedures [Chs. 595-686]

Subtitle 1. Domestic Relations [Chs. 595-601L]

Chapter 598. Dissolution of Marriage and Domestic Relations (Refs & Annos)

I.C.A. § 598.21D

598.21D. Relocation of parent as grounds to modify order of child custody

Currentness

If a parent awarded joint legal custody and physical care or sole legal custody is relocating the residence of the minor child to a location which is one hundred fifty miles or more from the residence of the minor child at the time that custody was awarded, the court may consider the relocation a substantial change in circumstances. If the court determines that the relocation is a substantial change in circumstances, the court shall modify the custody order to, at a minimum, preserve, as nearly as possible, the existing relationship between the minor child and the nonrelocating parent. If modified, the order may include a provision for extended visitation during summer vacations and school breaks and scheduled telephone contact between the nonrelocating parent and the minor child. The modification may include a provision assigning the responsibility for transportation of the minor child for visitation purposes to either or both parents. If the court makes a finding of past interference by the parent awarded joint legal custody and physical care or sole legal custody with the minor child's access to the other parent, the court may order the posting of a cash bond to assure future compliance with the visitation provisions of the decree. The supreme court shall prescribe guidelines for the forfeiting of the bond and restoration of the bond following forfeiting of the bond.

Credits

Added by [Acts 2005 \(81 G.A.\) ch. 69, S.F. 330, § 42.](#)

I. C. A. § 598.21D, IA ST § 598.21D

Current with legislation from the 2013 Reg.Sess.

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Title XV. Judicial Branch and Judicial Procedures [Chs. 595-686]

Subtitle 1. Domestic Relations [Chs. 595-601L]

Chapter 598. Dissolution of Marriage and Domestic Relations (Refs & Annos)

I.C.A. § 598.41

598.41. Custody of children

Effective: July 1, 2012

[Currentness](#)

1. a. The court may provide for joint custody of the child by the parties. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child unless direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result from such contact with one parent.

b. Notwithstanding paragraph “a”, if the court finds that a history of domestic abuse exists, a rebuttable presumption against the awarding of joint custody exists.

c. The court shall consider the denial by one parent of the child's opportunity for maximum continuing contact with the other parent, without just cause, a significant factor in determining the proper custody arrangement. Just cause may include a determination by the court pursuant to subsection 3, paragraph “j”, that a history of domestic abuse exists between the parents.

d. If a history of domestic abuse exists as determined by a court pursuant to subsection 3, paragraph “j”, and if a parent who is a victim of such domestic abuse relocates or is absent from the home based upon the fear of or actual acts or threats of domestic abuse perpetrated by the other parent, the court shall not consider the relocation or absence of that parent as a factor against that parent in the awarding of custody or visitation.

e. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. a. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody.

b. If the court does not grant joint custody under this subsection, the court shall cite clear and convincing evidence, pursuant to the factors in subsection 3, that joint custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.

c. A finding by the court that a history of domestic abuse exists, as specified in subsection 3, paragraph “j”, which is not rebutted, shall outweigh consideration of any other factor specified in subsection 3 in the determination of the awarding of custody under this subsection.

d. Before ruling upon the joint custody petition in these cases, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph “j”, or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parties to participate in custody mediation to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation insofar as the court determines the child's participation is advisable.

e. The costs of custody mediation shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under subsection 2 is in the best interest of the minor child, the court shall consider the following factors:

a. Whether each parent would be a suitable custodian for the child.

b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.

c. Whether the parents can communicate with each other regarding the child's needs.

d. Whether both parents have actively cared for the child before and since the separation.

e. Whether each parent can support the other parent's relationship with the child.

f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.

g. Whether one or both the parents agree or are opposed to joint custody.

h. The geographic proximity of the parents.

i. Whether the safety of the child, other children, or the other parent will be jeopardized by the awarding of joint custody or by unsupervised or unrestricted visitation.

j. Whether a history of domestic abuse, as defined in [section 236.2](#), exists. In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to [section 236.3](#), the issuance of a protective order against the parent or the issuance of a court order or consent agreement pursuant to [section 236.5](#),

the issuance of an emergency order pursuant to [section 236.6](#), the holding of a parent in contempt pursuant to [section 664A.7](#), the response of a peace officer to the scene of alleged domestic abuse or the arrest of a parent following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to [section 708.2A](#).

k. Whether a parent has allowed a person custody or control of, or unsupervised access to a child after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 692A.

4. Subsection 3 shall not apply when parents agree to joint custody.

5. a. If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. Prior to ruling on the request for the award of joint physical care, the court may require the parents to submit, either individually or jointly, a proposed joint physical care parenting plan. A proposed joint physical care parenting plan shall address how the parents will make decisions affecting the child, how the parents will provide a home for the child, how the child's time will be divided between the parents and how each parent will facilitate the child's time with the other parent, arrangements in addition to court-ordered child support for the child's expenses, how the parents will resolve major changes or disagreements affecting the child including changes that arise due to the child's age and developmental needs, and any other issues the court may require. If the court denies the request for joint physical care, the determination shall be accompanied by specific findings of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child.

b. If joint physical care is not awarded under paragraph "a", and only one joint custodial parent is awarded physical care, the parent responsible for providing physical care shall support the other parent's relationship with the child. Physical care awarded to one parent does not affect the other parent's rights and responsibilities as a joint legal custodian of the child. Rights and responsibilities as joint legal custodian of the child include but are not limited to equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction.

6. If the parties have more than one minor child, and the court awards each party the physical custody of one or more of the children, upon application by either party, and if it is reasonable and in the best interest of the children, the court shall include a provision in the custody order directing the parties to allow visitation between the children in each party's custody.

7. When a parent awarded legal custody or physical care of a child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award legal custody including physical care of the child to the surviving parent unless the court finds that such an award is not in the child's best interest.

8. If an application for modification of a decree or a petition for modification of an order is filed, based upon differences between the parents regarding the custody arrangement established under the decree or order, unless the court determines that a history of domestic abuse exists as specified in subsection 3, paragraph "j", or unless the court determines that direct physical harm or significant emotional harm to the child, other children, or a parent is likely to result, the court may require the parents to participate in mediation to attempt to resolve the differences between the parents.

9. All orders relating to custody of a child are subject to chapter 598B.

Credits

Added by Acts 1982 (69 G.A.) ch. 1250, § 2. Amended by Acts 1984 (70 G.A.) ch. 1088, §§ 2 to 5; Acts 1985 (71 G.A.) ch. 67, §§ 57, 58; Acts 1986 (71 G.A.) ch. 1179, §§ 5, 6; [Acts 1995 \(76 G.A.\) ch. 182, §§ 22 to 24](#); [Acts 1995 \(76 G.A.\) ch. 183, § 2](#); [Acts 1997 \(77 G.A.\) ch. 175, § 199, eff. May 21, 1997](#); [Acts 1999 \(78 G.A.\) ch. 115, § 1](#); [Acts 2004 \(80 G.A.\) ch. 1169 § 1](#); [Acts 2005 \(81 G.A.\) ch. 69, S.F. 330, §§ 51 to 53](#); [Acts 2006 \(81 G.A.\) ch. 1101, H.F. 2652, § 4](#); [Acts 2012 \(84 G.A.\) ch. 1138, H.F. 2465, § 37](#).

[Notes of Decisions \(1159\)](#)

I. C. A. § 598.41, IA ST § 598.41

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Title XV. Judicial Branch and Judicial Procedures [Chs. 595-686]

Subtitle 1. Domestic Relations [Chs. 595-601L]

Chapter 598. Dissolution of Marriage and Domestic Relations (Refs & Annos)

I.C.A. § 598.41A

598.41A. Visitation--history of crimes against a minor

Effective: May 15, 2013

[Currentness](#)

<[Text subject to final changes by the Iowa Code Editor for Code Supp. 2013.]>

1. Notwithstanding [section 598.41](#), the court shall consider, in the award of visitation rights to a parent of a child, the criminal history of the parent if the parent has been convicted of a sex offense against a minor as defined in [section 692A.101](#).

2. Notwithstanding [section 598.41](#), an individual who is a parent of a minor child and who has been convicted of a sex offense against a minor as defined in [section 692A.101](#), is not entitled to visitation rights while incarcerated. While on probation, parole, or any other type of conditional release including a special sentence for such offense, visitation shall be denied until the parent successfully completes a treatment program approved by the court, if required by the court. The circumstances described in this subsection shall be considered a substantial change in circumstances.

Credits

Added by [Acts 1998 \(77 G.A.\) ch. 1070, § 2](#). Amended by [Acts 2009 \(83 G.A.\) ch. 119, S.F. 340, § 42](#); [Acts 2013 \(85 G.A.\) H.F. 471, § 1, eff. May 15, 2013](#).

Editors' Notes

APPLICATION

<This section as amended by [Acts 2013 \(85 G.A.\) H.F. 471](#), applies retroactively to orders or decrees involving child custody or visitation issued on or after July 1, 2000, pursuant to [Acts 2013 \(85 G.A.\) H.F. 471, § 4](#). >

I. C. A. § 598.41A, IA ST § 598.41A

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Title XV. Judicial Branch and Judicial Procedures [Chs. 595-686]

Subtitle 1. Domestic Relations [Chs. 595-601L]

Chapter 598. Dissolution of Marriage and Domestic Relations (Refs & Annos)

I.C.A. § 598.41B

598.41B. Visitation--restrictions--murder of parent

Currentness

1. Notwithstanding [section 598.41](#), the court shall not do either of the following:

a. Enforce an existing order awarding visitation rights to a child's parent, which was obtained prior to that parent's conviction for first degree murder in the murder of the child's other parent, unless such enforcement is in the best interest of the child.

b. Award visitation rights to a child's parent who has been convicted of murder in the first degree of the child's other parent, unless the court finds that such visitation is in the best interest of the child.

2. In determining whether visitation would be in the best interest of the child pursuant to subsection 1, the court shall consider all of the following:

a. The age and level of maturity of the child.

b. If the child is developmentally mature enough to provide assent and whether the child does assent.

c. The recommendation of the child's custodian or legal guardian.

d. The recommendation of a child counselor or mental health professional following evaluation of the child.

e. The recommendation of a guardian ad litem for the child if one has been appointed to represent the child in the proceeding.

f. Any other information which the court deems to be relevant.

3. Until such time as an order regarding visitation rights under subsection 1 is entered, the child of a parent who has been convicted of murder in the first degree of the child's other parent shall not visit the parent who has been convicted.

Credits

Added by [Acts 1999 \(78 G.A.\) ch. 38, § 1.](#)

I. C. A. § 598.41B, IA ST § 598.41B

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Chapter 598. Dissolution of Marriage and Domestic Relations (Refs & Annos)

I.C.A. § 598.41C

598.41C. Modification of child custody or physical care--active duty

Effective: April 27, 2010

[Currentness](#)

1. a. If an application for modification of a decree or a petition for modification of an order regarding child custody or physical care is filed prior to or during the time a parent is serving active duty in the military service of the United States, the court may only enter an order or decree temporarily modifying the existing child custody or physical care order or decree if there is clear and convincing evidence that the modification is in the best interest of the child.

b. If the active duty of a parent affects the parent's ability or anticipated ability to appear at a regularly scheduled hearing, the court shall provide for an expedited hearing in matters instituted under this section.

c. If the active duty or anticipated active duty of a parent prevents the parent from appearing in person at a hearing, the court shall provide, upon reasonable advance notice, for the parent to present testimony and evidence by electronic means in matters instituted under this section. For the purposes of this paragraph, "electronic means" includes communication by telephone, video teleconference, or the internet.

d. Upon the parent's completion of active duty, the court shall reinstate the custody or physical care order or decree that was in effect immediately preceding the period of active duty. If an application for modification of a decree or a petition for modification of an order is filed after a parent completes active duty, the parent's absence due to active duty does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty in making a determination regarding the best interest of the child.

2. As used in this section, "active duty" means active military duty pursuant to orders issued under Tit. 10 of the United States Code.¹ However, this section shall not apply to active guard and reserve duty or similar full-time military duty performed by a parent when the child remains in actual custody of the parent.

Credits

Added by [Acts 2008 \(82 G.A.\) ch. 1060, S.F. 2214, § 1](#). Amended by [Acts 2010 \(83 G.A.\) ch. 1168, S.F. 2226, § 1](#), eff. April 27, 2010.

Footnotes

¹ See [10 U.S.C.A. § 101 et seq.](#)

I. C. A. § 598.41C, IA ST § 598.41C

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Chapter 598. Dissolution of Marriage and Domestic Relations (Refs & Annos)

I.C.A. § 598.41D

598.41D. Assignment of visitation or physical care parenting time--parent serving active duty--family member

Effective: April 12, 2011

[Currentness](#)

1. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered visitation with the parent's minor child may file an application for modification of a decree or a petition for modification of an order regarding child visitation, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign that parent's visitation to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member's knowledge of the application or petition and willingness to exercise the parent's visitation during the parent's absence. The application or petition shall also request any change in the visitation schedule necessitated by the assignment.

2. Notwithstanding any provision to the contrary, a parent who has been granted court-ordered physical care or joint physical care of the parent's minor child may file an application for modification of a decree or a petition for modification of an order regarding child custody, prior to or during the time the parent is serving active duty in the military service of the United States, to temporarily assign the parent's physical care parenting time to a family member of the minor child, as specified by the parent. The application or petition shall be accompanied by an affidavit from the family member indicating the family member's knowledge of the application or petition and willingness to exercise the parent's physical care parenting time during the parent's absence. The application or petition shall also request any change in the physical care parenting time schedule necessitated by the assignment.

3. a. If the active duty of a parent affects the parent's ability or anticipated ability to appear at a regularly scheduled hearing, the court shall provide for an expedited hearing in matters instituted under this section.

b. If the active duty or anticipated active duty of a parent prevents the parent from appearing in person at a hearing, the court shall provide, upon reasonable advance notice, for the parent to present testimony and evidence by electronic means in matters instituted under this section. For the purposes of this paragraph, "electronic means" includes communication by telephone, video teleconference, or the internet.

4. a. The court may grant the parent's request for temporary assignment of visitation or physical care parenting time and any change in the visitation or physical care parenting time schedule requested if the court finds that such assignment of visitation or physical care parenting time is in the best interest of the child.

b. In determining the best interest of the child, the court shall ensure all of the following:

(1) That the specified family member is not a sex offender as defined in [section 692A.101](#).

(2) That the specified family member does not have a history of domestic abuse, as defined in [section 236.2](#). In determining whether a history of domestic abuse exists, the court's consideration shall include but is not limited to commencement of an action pursuant to [section 236.3](#), the issuance of a protective order against the individual or the issuance of a court order or consent agreement pursuant to [section 236.5](#), the issuance of an emergency order pursuant to [section 236.6](#), the holding of an individual in contempt pursuant to [section 664A.7](#), the response of a peace officer to the scene of alleged domestic abuse or the arrest of an individual following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to [section 708.2A](#).

(3) That the specified family member does not have a record of founded child or dependent adult abuse.

(4) That the specified family member has an established relationship with the child and assigning visitation or physical care parenting time to the specified family member will provide the child the opportunity to maintain an ongoing family relationship that is important to the child.

(5) That the specified family member demonstrates an ability to personally and financially support the child and will support the child's relationship with both of the child's parents during the assigned visitation or physical care parenting time.

5. An order granting assignment of visitation or physical care parenting time under this section does not create separate rights to visitation or physical care parenting time for a person other than the parent. An order granting assignment of visitation or physical care parenting time under this section does not grant any custodial or parental rights to any person who is not the parent of the child.

6. An order granted under this section may temporarily assign visitation or physical care parenting time that is equal to or less than the visitation or physical care parenting time awarded to the parent whose visitation or physical care parenting time is assigned.

7. The parent whose visitation or physical care parenting time is temporarily assigned shall provide a copy of the order granting assignment of visitation or physical care parenting time to the school and school district of the child to whom the order applies.

8. An order granting temporary assignment of visitation or physical care parenting time pursuant to this section shall terminate upon notification of the court by the parent or automatically upon the parent's completion of active duty, whichever occurs first.

9. After a parent completes active duty, if an application for modification of a decree or a petition for modification of an order is filed, the parent's absence due to active duty or the assignment of visitation or physical care parenting time does not constitute a substantial change in circumstances, and the court shall not consider a parent's absence due to that active duty or the assignment of visitation or physical care parenting time in making a determination regarding the best interest of the child relative to such an application or petition filed after a parent completes active duty.

10. As used in this section, "active duty" means active military duty pursuant to orders issued under Tit. 10 of the United States Code.¹ However, this section shall not apply to active guard and reserve duty or similar full-time military duty performed by a parent when the child remains in actual custody of the parent.

11. As used in this section, “parenting time” means actual time spent with the child as specified in a decree or order, but does not include any other element of legal custody, physical care, or joint physical care.

Credits

Added by [Acts 2010 \(83 G.A.\) ch. 1168, S.F. 2226, § 2, eff. April 27, 2010](#). Amended by [Acts 2011 \(84 G.A.\) ch. 42, H.F. 195, § 1, eff. April 12, 2011](#).

Footnotes

[1](#) [10 U.S.C.A. § 101 et seq.](#)

I. C. A. § 598.41D, IA ST § 598.41D

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